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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,862	01/09/2002	Nobuhiro Kawamura	FUJY 19.313	8426
26304	7590	03/10/2005	EXAMINER	
KATTEN MUCHIN ZAVIS ROSENMAN 575 MADISON AVENUE NEW YORK, NY 10022-2585			JEAN GILLES, JUDE	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/043,862	KAWASAKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jude J Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2002.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-25 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

This office action is responsive to communication filed on 01/09/2002. Claimed priority is granted from Foreign Application 2001-285176 Filing Date: 09/19/2001.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-25** are rejected under 35 U.S.C. 102(e) as being anticipated by Pandya et al (Pandya), Patent No. 6,671,724 B1.

Regarding **claim 1**, Pandya discloses a providing service control device (*fig. 9, item 132*) comprising:

a module obtaining performance information indicating a state of a traffic congestion from a monitor target network (*column 10, lines 27-34; column 12, lines 5-28*);

a module storing information, as contract data of a contract with a user, showing a service substitutionally providable corresponding to the state of the traffic congestion (*column 13, lines 4-19; fig. 9, item 138*); and

a control module determining the substitutionally providable service on the basis of the obtained performance information and the contract data, and having the corresponding service provided to a client terminal used by the user (*column 11, lines 16-65*).

Regarding **claim 2**, Pandya discloses a providing service control device according to claim 1, wherein said monitor target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (*column 4, lines 47-51; column 8, lines 65-67; column 10, lines 1-30*).

Regarding **claim 3**, Pandya discloses a providing service control device according to claim 1, wherein said control module controls at least one of a network device and a server within a provider network, and has the corresponding service provided to said client terminal used by the user (*column 6, lines 7-35*).

Regarding **claim 4**, Pandya discloses a providing service control device according to claim 3, wherein said control module changes at least one of a data size and a data quality of data transmitted by said server to said client terminal as the substitutionally providable service (*column 18, lines 37-58*).

Regarding **claim 5**, Pandya discloses a providing service control device according to claim 4, wherein the changed data to be transmitted by said server to said client terminal are content data registered previously in said server by a content provider (*column 10, lines 66-67; column 11, lines 1-15*).

Regarding **claim 6**, Pandya discloses a providing service control device according to claim 3, wherein said control module has a transmission band of an Internet access line changed that is utilized by said client terminal (*column 4, lines 47-61; column; column 11, lines 3-64*).

Regarding **claim 7**, Pandya discloses a providing service control device according to claim 1, further comprising a module notifying said client terminal of the obtained performance information (*column 12, lines 44-63*).

Regarding **claim 8**, Pandya discloses a providing service control device according to claim 7, further comprising a module receiving a contract data change request that responds to the performance information of which said client terminal has been notified (*column 11, lines 3-64*).

Regarding **claim 9**, Pandya discloses a network system comprising:

- (A) a providing service control device comprising:
  - (a) a module obtaining performance information indicating a state of a traffic congestion from a monitor target network (*column 10, lines 27-34; column 12, lines 5-28*);
  - (b) a module storing information, as contract data of a contract with a user, showing a service substitutionally providable corresponding to the state of the traffic congestion (*column 13, lines 4-19; fig. 9, item 138*); and
  - (c) a control module determining the substitutionally providable service on the basis of the obtained performance information and the contract data, and

having the corresponding service provided to a client terminal used by the user (*column 11, lines 16-65*); and (B)said client terminal comprising:

- (d) a module independently obtaining performance information indicating a state of a traffic congestion from said monitor target network (*column 10, lines 27-34; column 12, lines 5-28*); and
- (e) a module executing the contract data change request on the basis of the independently obtained performance information (*column 10, lines 66-67; column 11, lines 1-15*).

Regarding **claim 10**, Pandya discloses a network system according to claim 9, wherein said providing service control device further comprises a module notifying said client terminal of the obtained performance information (*column 12, lines 44-63*). , and said client terminal further comprises a module receiving the performance information of which said providing service control device has notified (*column 11, lines 3-64*).

Regarding **claim 11**, Pandya discloses a network system according to claim 10, wherein said providing service control device further comprises a module receiving the contract data change request that responds to the performance information of which said client terminal has been notified (*column 11, lines 3-64*), and said client terminal further comprises a module executing the contract data change request based on the performance information of which said providing service control device has notified (*column 10, lines 66-67; column 11, lines 1-15*).

Regarding **claim 12**, Pandya discloses a network system according to claim 11, wherein said client terminal further comprises a module controlling said client terminal itself on the basis of any one of the independently obtained performance information and the performance information of which said providing service control device has notified (*column 10, lines 66-67; column 11, lines 1-15*).

Regarding **claim 13**, Pandya discloses a network system according to claim 9, wherein said monitor target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (*column 4, lines 47-51; column 8, lines 65-67; column 10, lines 1-30*).

Regarding **claim 14**, Pandya discloses a network system according to claim 9, wherein said control module controls at least one of a network device and a server within a provider network, and has the corresponding service provided to said client terminal used by the user (*column 6, lines 7-35*).

Regarding **claim 15**, Pandya discloses a network system according to claim 14, wherein said control module changes at least one of a data size and a data quality of data transmitted by said server to said client terminal as the substitutionally provable service (*column 18, lines 37-58*).

Regarding **claim 16**, Pandya discloses a network system according to claim 15, wherein the changed data to be transmitted by said server to said client terminal are content data registered previously in said server by a content provider (*column 10, lines 66-67; column 11, lines 1-15*).

Regarding **claim 25**, Pandya discloses a readable-by-computer recording medium recorded with a program read by a computer to execute:

obtaining performance information indicating a state of a traffic congestion from a monitor target network (*column 10, lines 27-34; column 12, lines 5-28*);

storing information, as contract data of a contract with a user, showing a service substitutionally provable corresponding to the state of the traffic congestion (*column 13, lines 4-19; fig. 9, item 138*); and

determining the substitutionally provable service on the basis of the obtained performance information and the contract data, and having the corresponding service provided to a client terminal used by the user (*column 11, lines 16-65*).

### ***Similar Claims***

3. **Claim 18** lists all the same elements of **claim 1**, but in method form rather than device form. Therefore, the supporting rationale of the rejection to **claim 1** applies equally as well to **claim 18**.

**Claim 19** lists all the same elements of **claim 3**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 3** applies equally as well to **claim 19**.

**Claim 20** lists all the same elements of **claim 4**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 4** applies equally as well to **claim 20**.

**Claim 21** lists all the same elements of **claim 5**, but in apparatus form rather

than method form. Therefore, the supporting rationale of the rejection to **claim 5** applies equally as well to **claim 21**.

**Claim 23** lists all the same elements of **claim 7**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 7** applies equally as well to **claim 23**.

**Claim 24** lists all the same elements of **claim 8**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 8** applies equally as well to **claim 24**.

**Claim 17** lists all the same elements of **claim 6**, but in system form rather than device form. Therefore, the supporting rationale of the rejection to **claim 6** applies equally as well to **claim 17**.

**Claim 22** lists all the same elements of **claim 6**, but in method form rather than device form. Therefore, the supporting rationale of the rejection to **claim 6** applies equally as well to **claim 22**.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

JJG

March 05, 2005

Will C. Vaughn Jr.  
Primary Examiner  
Art Unit 2143  
William C. Vaughn Jr.

JG